IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 314 of 2002
&
COPC No. 8 of 2003.

Judgment reserved on: 14.12.2007

Date of Decision: December 29, 2007

Suram Singh & ors. … Appellant(s)

Versus

Naresh Kumar & ors. … Respondent(s)

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant : M/s H.K.Bhardwaj & Rajinder Kanwar, Advocates.

For the Respondent(s) : Mr. Ajay Sharma, Advocate, for Respondents 1 & 2.
Mr. Sanjeev Kuthiala, Advocate, for respondent No.5.

Deepak Gupta, J

The appellant, hereinafter referred to as the plaintiff, filed a suit for declaration to the effect that he is in owner in possession of 16 kanals 5 marlas being ½ share of land measuring 32 kalas 10 marlas comprised in khewat No.75, khatauni No.193, khasra Nos. 4544, 4545, 4546 & 4547 as entered in jamabandi for the year 1976-77 situate in village Bhanjal, Tehsil Amb, District Una, with a

consequential relief of permanent injunction restraining the defendants from ousting the plaintiff from the suit land.

The case of the plaintiff is that previously he alone was coming in possession of 32 kanals 10 marlas of land as tenant-at-will under the owners as per jamabandi for the year 1963-64. Thereafter, the defendant No.4 Phoola Singh purchased ½ share of the land from Devinder Singh, one of the owners and since then the plaintiff is coming in possession of ½ share as tenant. According to the plaintiff by operation of law, he has become owner of ½ share in view of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (for short: the Act). This suit was contested by the respondents on various grounds. One of the grounds raised was that the civil Court had no jurisdiction to entertain the dispute.

The learned trial Court dismissed the suit of the plaintiff holding that he was not the tenant in the land in question. It did, however, decide the question as to whether the civil Court had jurisdiction to decide the suit of the plaintiff. The plaintiff thereafter filed an appeal before the learned lower Appellate Court who relying upon the judgments of this Court in **Chuhniya Devi** v. **Jindu Ram** (1991(1) Sim.LC 223 and **Shankar** v. **Smt. Rukmani & others** (2003 (1) Shim. LC 300), held that the civil court had no jurisdiction to decide the question of tenancy and,

therefore, set aside the judgment and decree of the trial court and ordered return of the plaint to the plaintiff for proper presentation. Aggrieved against this judgment, the plaintiff has filed the aforesaid appeal.

I have heard Shri H.K.Bhardwaj learned counsel for the appellants, Shri Ajay Sharma, learned counsel for respondents 1 & 2 and Shri Sanjiv Kuthiala, learned counsel for respondent No.3.

Shri H.K.Bhardwaj has urged that in view of the judgment of our Division Bench of this Court in **Shankar Singh** v. **Smt. Rukmani and others** (2003 (1) Shim. LC 300), and the subsequent judgment of this Court in **Tajdin** v. **Smt. Milkho Devi & others** (Latest HLJ 2005(HP) 825), and **Gopal Krishan** v. **Jagtamba Parsad and others** (2002 (1) SLJ 425). The judgment in **Gopal Krishan's** case *(supra)* is no longer a good law and the civil court is entitled to decide the questioning of tenancy as long as the validity of the proceedings or order made under Chapter X of the Act are not called in question in any civil Court.

In **Chuhniya Devi's** case *(supra),* the Full Bench after reviewing the various decisions on the subject and the relevant provisions of the H.P. Land Revenue Act and the H.P. Tenancy and Land Reforms Act answered the questions as follows:

"64.We have attempted to do it in the present case and have come to the conclusion that the Legislature has envisaged a complete Code in the provisions of the H.P. Tenancy and Land Reforms Act, 1972, inter alia, for effectuating its purpose of land reforms and has ruled out determination of any question connected therewith by the civil court.

The Answer

Our answer, therefore, is:

(a)that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37 (3) and section 46 of that Act; and

(b)the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with."

During the Course of judgment the Full Bench has made various pertinent observations. In paragraphs 39 & 40 it is observed as follows:

"39……It is implicit in sub-section (4) of section 104 that the Legislature envisaged that a dispute may arise whether a person cultivating the land of a landowner is a tenant or not, <u>when proceedings were in progress under Chapter X</u>, and provided that it shall be decided by the authorities contemplated under this Chapter who shall require the landowner to establish that a person cultivating his land is not a tenant.

40.Any enquiry by a Civil Court on the question was barred by the Legislature by specifically providing in Sections 112 and 115, <u>both occurring in chapter X, that the validity of any order made under the Chapter shall not be called in question in any court</u> and that the order shall be final except as expressly provided in the Chapter. The Legislature knew its mind fully well. Where it wanted a dispute to be

determined by the Civil Court, it provided so in Chapter X itself. One has only to look at Sections 107 and 109 (2). Not only that the Legislature ruled out any determination by a Civil Court, by necessary implication, of other matters, it expressly said so in sections 112 and 115."(emphasis supplied)

This judgment was interpreted differently by various learned Single Judges of this Court and the judgment in **Gopal Kishan's** case (supra) was one in the series of the judgments. Thereafter the Division Bench of this Court in **Shankar** v. **Smt. Rukmani Devi's** case (supra) to which Justice K.C.Sood was a Member, held as follows:-

"9.After analyzing the judgment in **Chuhniya Devi vs.Jindu Ram's case (supra),** we have no doubt that the jurisdiction of the Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction."(emphasis supplied)

All these judgments were considered by him in **Tajdin's case** (supra) and I held as follows :-

"This judgment appears to have settled all the matters about which there was some conflict with regard to the interpretation of the judgment of the Full Bench in **Chuhniya Devi vs.Jindu Ram's case (supra).** One factor which has to be kept in mind and should not be lost sight of while considering the import of the judgment of the Full Bench is that the question before the Full Bench was whether the Civil Court had jurisdiction in respect of an order conferring proprietary

rights under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972 which had not been assailed under the provisions of the said Act. The Full Bench in para 39 again made it clear that a dispute may arise where the person cultivating the land of a land owner is a tenant or not, when proceedings were in progress under Chapter-X. The Full Bench was dealing with the impact of the bar to the jurisdiction of the Civil Court under Sections 112 and 115 of the H.P. Tenancy and Land Reforms Act both of which occur in Chapter X and it is in this context that the observation made in para 40 have to be read. Again in para 44 (quoted above) the Full Bench has clearly held that the exclusion of the jurisdiction of the Civil Court in the matter of determining the question whether a person cultivating the land of the land owner is a tenant or not for the purposes of Chapter X is both reasonable and understandable. It is thus clear that the question before the Full Bench and its answer and the various observations were confined to disputes pertaining to the relationship of landlord and tenant arising out of and during the course of proceedings of conferment of proprietary rights of the tenant under Chapter X of the H.P. Tenancy and Land Reforms Act. The observations made in Chapter 45 have to be read in this context only.

This has been amply clarified by the Division Bench in **Shankar's** case (supra) wherein after analyzing the entire law of the judgment in **Chuhniya Devi's** case (supra) the Division Bench held that if a dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and the resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act the Civil Court will have no jurisdiction except in a case where it is found that the competent authority has acted either in violation of the Rules of Natural Justice or contrary to the provisions of law laid down in the Act or the Rules. If the dispute regarding the relationship of landlord and tenant has no connection with the proceedings under Chapter-X of H.P. Tenancy and Land Reforms Act the Civil Court would have jurisdiction to hear and decide this dispute.

> I am not only bound but am in respectful agreement with the observations of the Division Bench in **Shankar's** case quoted hereinbefore. The bar to the jurisdiction of the Civil Court under Section 112 of the Tenancy and Land Reforms Act will only apply when the validity of proceedings or order made under Chapter X are called in question in any Civil Court. Similarly under Section 115 of the said Act the order in appeal or revision passed by the Collector, Commission or Financial Commissioner can also not be challenged before the Civil Court unless the same is in violation of the principles of Natural Justice or is contrary to the provisions of the Rules or the Act. The foundation for this must be laid in the plaint. It is the averments made in the plaint which will show whether the Civil Court has or does not have jurisdiction to entertain the suit."

It is thus clear that the view of this Court now is that the bar to the jurisdiction of the Civil Court will apply only when the validity of the proceedings or order made under Chapter X of the H.P.Tenancy and Land Reforms Act is called in question in civil court.

In the present case, no such order has been passed or brought to the notice of this Court. No proceedings under the H.P. Tenancy and Land Reforms Act are pending. The vestment of ownership rights under the H.P. Tenancy and Land Reforms Act is automatic. Therefore, the civil court would definitely have the jurisdiction to decide the dispute.

In view of the aforesaid discussion, the appeal is allowed and the matter is remanded to the lower Appellate Court who is directed to restore the appeal to its original number and decide

the same on merits. Since the appeal was filed in the year 1995 and the original suit was filed in the year 1987, the learned lower Appellate Court is directed to dispose of the case as early as possible in any event not later than 30.6.2008.

The parties through their counsel are directed to appear before the learned lower Appellate Court on 6.2.2008. The registry is directed to ensure that records of the case are dispatched so as to reach the lower Appellate Court well before the said date.

The appeal is disposed of in the aforesaid terms.

COPC No. 8 of 2003.

In view of the orders passed in the main matter, the COPC is dismissed. Notice discharged.

December ___ , 2007. (Deepak Gupta), J.

s.

29. 12.2007 Present: M/s H.K.Bhardwaj & Rajinder Kanwar, Advocates, for the petitioner.

Mr. Ajay Sharma, counsel for the respondents 1 to 3.

COPC No. 8 of 2003.

In view of the orders passed in FAO No. 314 of 2002, the COPC is dismissed. Notice discharged.

December 29, 2007 (Deepak Gupta),J.

s.